Criminal Misc. Application No. 96 of 2003

Hon. Irshad Hussain, J.

By this petition the order impugned dated 15.05.2003 has been challenged. The application for restoration of the case under section 125 of the Code of Criminal Procedure was dismissed on the ground that there was no sufficient cause to have the exparte order in favour of the respondent-wife set aside.

Learned counsel for the petitioner submitted that the petitioner had not been afforded opportunity to plead his case because despite the permission given the services of an advocate could not be procured by him to represent him in the case properly. From the perusal of the impugned order it is evident that the permission to engage the counsel was given but the application for setting aside exparte order was also disposed of the same day and the order indicate that the services of the counsel were not availed by the petitioner. Considering this, there are reasons to interfere in the impugned order.

Petition is allowed and the impugned order dated 15.05.2003 is set aside. The Principal Judge, Family Court shall decide the application of the petitioner-husband on merit at the earliest and pass appropriate order. It may be suggested that if the exparte judgment and order under section 125 of the Cri.P.C. is set aside, a proper order for interim Maintenance which may be paid to the wife and children, also be passed keeping in view the circumstances of the case and the capacity of the petitioner-husband. With this the petition is disposed of finally.

(Irshad Hussain, J.)

30.05.2003B.